

**Notice of Allowability**

Application No.

10/043,443

Examiner

Ryan F. Pitaro

Applicant(s)

BARRUS ET AL.

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 24 May 2006.
2. ☒ The allowed claim(s) is/are 1-10, 13-21.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Kristine Kincaid*  
KRISTINE KINCAID  
SUPERVISORY PATENT EXAMINER  
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## **DETAILED ACTION**

### ***Election/Restrictions***

Upon further review of the claims it appears that claims 1-65 differ in subject matter and therefore require a different search. In accordance with this a restriction is deemed proper.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-21, drawn to a method for generating and displaying audio elements, depicting ordinal values to construct a visual play list, classified in Class 715, subclass 716.

Group II. Claim 22-65, drawn to the editing of audio elements, specifically deleting, merging, and splitting of audio files, classified in Class 715, subclass 723.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination Invention I

has separate utility such as visually depicting audio elements free of temporal sequencing in a play list, while Invention II is directed to editing audio elements by combining, deleting, or splitting them. See MPEP § 806.05(d).

Because these inventions are distinct for the reason given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, and because the searches for the individual Groups are not coextensive, restriction for examination purposes as indicated is proper.

During a telephone conversation with Edward Weller on August 3, 2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21.

#### **EXAMINER'S AMENDMENT**

This application is in condition for allowance as per Examiner's Amendment except for the presence of claims 22-65 are directed to Group II, audio editing and are non-elected without traverse. Accordingly, claims 22-65 have been cancelled.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward Weller on August 3, 2006.

Amendments to the claims:

1. (Currently Amended) A method for generating one or more audio elements, the method comprising the steps of: receiving user input; creating a first audio element, with an audio data field, in response to the user input; creating a second audio element, with an audio data field, in response to the user input; displaying a visual representation of the first audio element located spatially on a two dimensional layout capable of displaying non-audio elements, wherein a display position of the visual representation is independent of the audio data field in the first audio element and controllable by a user; displaying a visual representation of the second audio element located spatially on the two dimensional layout, wherein a display position of the visual representation of the second audio element is independent of the audio data field of the second audio element, a temporal sequence or relationship to the first audio element, and the visual representation of the first audio element, and is controllable by the user, creating a link between the first audio element and the second audio element; and displaying a visual representation of the link as a connector between the visual representation of the first audio element and the visual representation of the second audio element.

11. (Cancelled)

12. (Cancelled)

22-65. (Cancelled)

### ***Allowable Subject Matter***

The following is an examiner's statement of reasons for allowance: The prior art is silent in teaching specifically visual representations of spatially and temporally independent audio elements with visual representation of links as connectors between the audio elements along with all of the other limitations of the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan F. Pitaro whose telephone number is 571-272-4071. The examiner can normally be reached on 7:00am - 4:30pm Mondays through Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on 571-272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Patent Examiner  
Art Unit 2174

RFP